

Comment Info: =====

General Comment: It must first be stated that many of the rule changes proposed for the H2A program are very productive. There remains however a large problem that seems to be heavily overlooked. The need for these proposed changes has been stated by the Department of Labor as such:

?Facing a shortage of available US workers, agricultural employers have been left with the untenable choice of either (a) attempting to legally employ temporary foreign workers through an H-2A program that is widely decried as dysfunctional, but risking losing crops if inefficient program administration results in the workers arriving too late for harvest; (b) using illegal workers, and incurring the risk that the workers, and consequently the crops, will be lost to immigration enforcement; of (c) not hiring any workers at all? in effect, ending US farming operations.

It is entirely unacceptable, but perhaps unsurprising, that many agricultural employers have chosen in recent years to take their chances with undocumented workers? if for no other reason than a lack of viable alternatives.

The willingness of agricultural employers to hire illegal workers has created a continuing economic magnet encouraging illegal workers to enter the US, resulting in attendant problems for national security and the rule of law, as well as additional costs associated with an underground economy, crime, and social services.

This increasing reliance on undocumented workers has left the agricultural workforce increasingly vulnerable to exploitation because illegal workers fear deportation if they complain about substandard wages or working conditions.?

The outcome of which the Department of Labor anticipates from these proposed changes is that more US employers will use the H2A program as opposed to the alternative being to hire illegal workers or close down their farming operation.

Obviously the alternatives to the H2A program are unproductive to the economy and American interests. It is the Department's stated intent to increase H2A usage and decrease the other two choices of action. The issue at hand revolves

around the proposed new 655.105(n) Prohibition on cost-shifting. This proposition

sounds great to the uninformed reader but the consequences of this action are completely misunderstood. If agents/attorneys/recruiters cannot charge a placement fee to the workers for their burden of providing and securing them a position as well as the burden of recruitment costs abroad such as advertising costs and costs to keep offices open to assist workers through the difficult US

Consulate systems then the agents/attorneys/recruiters who recruit and place H2A workers will go out of business. It is the placement fee derived from the worker that maintains the operations of these organizations to be able to provide

H2A employers with the workers they need. The fee paid by the worker is a rightful fee based on the service of providing a job and assistance through the

consulate. The US Consulates abroad already have a high denial rate, most of which is for petty and futile reasons. Without the assistance of an agent the denial rate with H2A workers will dramatically increase. If agencies and recruiters

both abroad and in-country shut down then the smaller employer will be left with

the inability to recruit foreign workers. The burden of flying to another country and

attempting to find workers alone will be enough to dissuade smaller employers from using the H2A program. Not to mention the lack of a venue in which to recruit mixed with the uncertainty of successful consulate appointments for the

workers who have nobody to guide them through the process. This will be a financial and logistical burden added to the employer of great proportions, especially for the smaller H2A employer who wishes to utilize the H2A program. In our eyes the securing of a position, a visa, assistance through the

consulate

and help in transferring to a new employer when your job ends is more than worth

H2A workers paying a fee. This is a great service and simply put, a service industry has the right to charge for their services. Also, how will H2A workers who wish to transfer and extend their stay find new H2A employment without the agency? Both H2A employers and H2A worker are dependent upon the service that an H2A agency provides in order to continue in their pursuits, and ensure H2A workers maintain legal status. Therefore both the employer and the employee should fairly have fees given to maintain this service. Even employment agencies that provide jobs strictly for US workers are able to charge the US workers a fee for placement. The reality is that if the agencies are unable to charge workers for their services then they will go out of business. The employer cannot maintain the entire burden of the expenses that keep these offices open. If the agencies close the employer will then be left with the absolute inability to recruit H2A workers both in-country or abroad. In effect there will be no point in the employer even attempting to apply for the H2A program. The outcome of this will lead to a decrease in the usage of the H2A program by agricultural employers as opposed to a increase of usage as hoped for. This will lead to the increase in either (b) using illegal workers, and incurring the risk that the workers, and consequently the crops, will be lost to immigration enforcement; or (c) not hiring any workers at all ? in effect, ending US farming operations, as previously mentioned. Therefore the obvious outcome of these rule changes in their present state will have the opposite effect than that of which the Department is hoping for and create a further burden on our agricultural industry as well as a greater burden to our already weakening economy. I would suggest instead of cutting out agencies altogether that the Department sets up a way of certifying agencies. Causing them to recognize all H2A rules and become more accountable when they or their clients are found not complying with these regulations. At the same time very strict punishment could be imposed on agencies that are caught in the practice of visa fraud, human trafficking or any other activity that does not hold to the integrity of the program.

•The Department has stated in line with section 605 of the Regulatory Flexibility Act (RFA), that "there are not a substantial number of small businesses that will be effected, nor is there a significant economic impact upon those small entities that are." The majority of the H2A employers who utilize this program are considered "small" and "insignificant" to the Department. However, one agricultural employer in the grain & crop farming industry, who hires just 6 H2A employees in an area like the Dakotas where there really are no US workers to hire, is an operation of roughly 12000 acres. An operation like this will produce thousands and thousands of bushels of wheat, beans, corn, etc., per season. Operations like this produce the food that our nation needs in order to survive. The consequence of an operation of this size closing down has detrimental effects on all facets of the economy that are not weighted in by the Departments standard of measurements. Farming operations of this type have greater economic impact than simply the gross annual income of that employer. When these operations close down, the supply of agricultural products goes down, causing the costs of these agricultural products to rise, causing all industries outside of the agricultural industry that use these goods to produce their own product to have greater expenses. This then causes the costs of their goods to rise on the market value thus becoming a greater burden to middle and lower class American families who already struggle to make ends meet. Small corn, wheat & bean operations closing down will affect the costs of ethanol gasoline, corn tortillas, bread, soy products and a multitude of other goods that average Americans buy every day at

market value. I would ask the Department to greatly reevaluate their quite narrow-minded method of deducting what is a "significant economic impact," or not in the agricultural industry.

•Employment USA LLC, in Aberdeen, SD handles the paperwork and recruits workers for over 100 small farming operations who take roughly one to ten workers per season. Part of our service is to ensure that workers stay in status and that both employers and employees comply with all laws regarding the program. We assist workers in everything from knowing their rights, their requirements and even assisting in booking plane tickets. This service requires a fee to be maintained by both parties. Both Employers and Employees remain thankful for our services. These changes will dramatically affect the lives of these individuals and I ask the Department to consider these possibly overlooked impacts that I have attempted to bring to call to attention.